

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

75-7162

UNITED STATES COURT OF APPEALS
for the Second Circuit

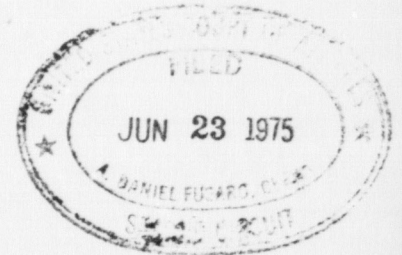
JOHN F. COSTELLOE,

Plaintiff-Appellant,

against

TRANS WORLD AIRLINES, INC.,

Defendant-Appellee.



On Appeal from an Order of the United States District Court
for the Eastern District of New York

APPELLEES' SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF NEW YORK

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JOHN F. COSTELLOE :

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Plaintiff :

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against :

75 C 157

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T.W.A. :

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Defendant :

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United States Courthouse
Brooklyn, New York

13

14

February 7, 1975
11:30 a.m.

15

B e f o r e

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HONORABLE ORRIN G. JUDD,

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U. S. D. J.

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SHELDON SILVERMAN
Acting Official Court Reporter

25

Appearances:

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By: HAROLD L. WARNER, Esq., of counsel

(In Chambers)

1
2 THE COURT: Mr. Warner brought in an ex parte
3 order for me just after these papers were served
4 asking they be sealed and I thought the proper thing
5 was to seal them and avoid any problem. Since then
6 I have had a call from the Kansas City Star asking
7 when the hearing was going to be held, and this
8 morning from the Wall Street Journal. I'm not sure
9 how the news got out. I'm not sure whether you
10 have anything to say, Mr. Costelloe with respect
11 to the publicity on the matter. I held it in chambers
12 because of Mr. Warner's statement.

13 Maybe you should say a little more, Mr. Warner,
14 why you want this in chambers.

15 MR. WARNER: Your Honor, I would have to say
16 so much at the moment, but it's basically to protect
17 the plaintiff in this case because of the matters
18 in the moving papers and because, also --

19 THE COURT: You mean in his moving papers?

20 MR. WARNER: In his moving papers and my
21 response.

22 MR. COSTELLOE: I haven't seen the response.

23 THE COURT: Have you any answering papers
24 this morning?

25 MR. WARNER: Yes, I do, your Honor.

1 THE COURT: Your response simply refers to
2 what you call a vicious campaign against your firm
3 and its clients referred to in a Southern District
4 case which has been sealed and which I know nothing
5 about.

6 MR. WARNER: I would like to --

7 THE COURT: Except that the action was used
8 to force settlement of a claim for compensation as a
9 tax consultant.

10 MR. WARNER: I would like to file our answering
11 papers to the show cause order.

12 THE COURT: Suppose you give those to
13 Mr. Costelloe right now.

14 MR. WARNER: I shall, and a cross motion to
15 dismiss the complaint; also, of course, any adverse
16 publicity might affect a \$100 million sale of air-
17 craft and irreparably damage T.W.A.

18 THE COURT: I suppose the plaintiff may not
19 be that much concerned about what's in your papers,
20 but I have some concern about what the effect of
21 this would be.

22 Is there any reason why I shouldn't go ahead
23 in chambers, Mr. Costelloe?

24 MR. COSTELLOE: I think you should go ahead.
25 I don't think there's any reason to seal.

1 THE COURT: Do you know anything about how
2 this matter got to the newspapers?

3 MR. COSTELLOE: No, I don't. My office had
4 a telephone call on Tuesday from a Mr. Ed Sullivan.
5 It came in at about 11:45. My wife answered it.
6 He had the name of the case and the number of the
7 case and said he had seen it and he asked questions
8 about it.

9 My wife said I was in the city and she knew
10 nothing about it.

11 I next called Mr. Miles Cunningham the next
12 day.

13 THE COURT: The U.S. Attorney's office?

14 MR. COSTELLOE: Yes. I worked with him on
15 the kickback matter.

16 I said I was much concerned of the leak,
17 particularly since my assistant and I were with
18 Judge Mishler on Monday, a reference to the leak
19 in the case involving an informant. I said I re-
20 gretted any publicity in the matter and I asked for
21 his guidance. Unfortunately, he was on vacation.

22 Mr. DePetrìs, an Assistant, called back and
23 I gave him the information and told him that I was
24 concerned about the leak and that from Mr. Cunning-
25 ham's information, since he will be back from

1 vacation on Friday, that there would be a hearing
2 in Courtroom 11 at 11:30.

3 THE COURT: I don't know if there's any leak.

4 MR. COSTELLOE: There isn't any.

5 THE COURT: You had to file a complaint before
6 you got to Judge Mishler or me, and the title and name
7 and number are public documents.

8 MR. COSTELLOE: The only other person I talked
9 to was Mr. Brown of the Internal Revenue Service --
10 I'm sorry, Somers Brown is his full name. Then I had
11 a call from Henry Soloff of C.B.S. That was the
12 night before last.

13 THE COURT: I have Mr. Warner's motion to
14 dismiss, and I expressed concern when I signed the
15 order to show cause about what your standing was.

16 MR. COSTELLOE: Yes, sir.

17 THE COURT: Do you have anything to add to
18 that?

19 MR. COSTELLOE: I own stock. I'm a creditor--

20 THE COURT: You say your son owns stock?

21 MR. COSTELLOE: I say I'm the beneficial owner,
22 it's in his name as nominee.

23 THE COURT: How old is he?

24 MR. COSTELLOE: He was about seventeen when
25 it was purchased. He's about twenty-one now. That's

1 a very rough recollection.

2 THE COURT: Let's see what the complaint says.

3 MR. COSTELLOE: That's paragraph 33 at page 9.

4 THE COURT: Well, I suppose you have an
5 allegation in there that you're the beneficial owner
6 of the stock. I don't know whether you have to be
7 an owner of record to bring a stockholder's action
8 or not.

9 Tell me about your motion to dismiss, Mr. War-
10 ner.

11 MR. WARNER: Your Honor, as will be seen by
12 our answering papers, it is T.W.A.'s position that this
13 action has not been brought in good faith. It has
14 been brought by a pro se plaintiff's attorney who
15 was formerly a partner of my law firm. He was a
16 partner from March of 1958 until June 1 of 1968.

17 Thereafter, he served as tax consultant to our
18 firm for a three-year term, ending December 31, 1971.

19 MR. COSTELLOE: Not a three-year term.

20 MR. WARNER: As such --

21 MR. COSTELLOE: Not a three-year term.

22 THE COURT: A little more, three and a half
23 or so.

24 MR. WARNER: As such, he was privy to and
25 handled tax matters on behalf of T.W.A. He is

1 therefore disqualified under the clear rulings of
2 the United States Court of Appeals for the Second
3 Circuit from maintaining this action, whether as
4 party-plaintiff or as attorney.

5 THE COURT: Even through it relates to
6 matters -- the complaint does not relate only to the
7 sale. It relates --

8 MR. WARNER: It relates to tax matters, your
9 Honor. Paragraph 22. As a matter of fact, the
10 complaint is replete with references to tax matters--

11 THE COURT: The injunction is directed to
12 alleged misrepresentations of tax liabilities.

13 MR. WARNER: Yes.

14 THE COURT: So I think you're right.

15 MR. WARNER: Judge Kaufman in Emily Industries
16 v. Paten Tex, 478 F.2d 562, said, "The dynamics of
17 litigation are far too subtle. The attorneys' role
18 in the process is far too critical, and the public's
19 interest in the outcome is far too great to leave
20 room for even the slightest doubt concerning the
21 ethical propriety of a lawyer's representation in a
22 given case. These considerations require applica-
23 tion of a strict prophylactic rule to prevent any
24 possibility, however slight, that confidential
25 information acquired from a client may subsequently

1 be used to a client's disadvantage."

2 In that case and the Meyerhofer --

3 THE COURT: Is that in your memorandum?

4 MR. WARNER: Yes, page 6 and 7, your Honor.

5 Judge Kaufman said in that case, "A lawyer
6 should avoid representation of a party in a suit
7 against a former client where there may be the
8 appearance of possible violation of confidence even
9 though this may not be true in fact."

10 Much as I regret to say it, my former partner's
11 bringing of this scurrilous lawsuit goes far beyond
12 the bounds set by Judge Kaufman.

13 Mr. Costelloe has threatened and libeled the
14 chairman of the board of T.W.A. He has telephoned
15 and written to Mr. Raymond R. Fletcher, Jr., whose
16 opposing affidavit I have submitted here, two
17 telephone calls demanding payment of \$750,000, which
18 Mr. Costelloe claims T.W.A. owes him for legal
19 services rendered when Mr. Costelloe was a consultant
20 to my firm. T.W.A. refused to make that payment of
21 \$750,000, and ever since then has been the victim --
22 a few examples are appended to Mr. Fletcher's affi-
23 davit here, of the most vicious letter writing
24 campaign imaginable.

25 If Mr. Costelloe thinks T.W.A. owes him money

1 for legal services, let him sue T.W.A. for legal
2 services. If he thinks my firm owes him money under
3 our consulting agreement and despite the greatest
4 provocation, we have paid him every penny due under
5 that agreement, he has conducted this campaign in
6 the sealed file before Judge Connor, he sued another
7 of my firm's clients. That was an allegation that
8 he had purchased stock and had been misled by the
9 information that Sperry Rand Corporation had given.
10 Judge Connor dismissed that action, saying --

11 MR. COSTELLOE: Your Honor, that isn't so.

12 THE COURT: Let's stop, Mr. Warner.

13 MR. COSTELLOE: The cumulative effect con-
14 cerns me.

15 THE COURT: Did you work as a lawyer on
16 T.W.A. tax matters?

17 MR. COSTELLOE: On their tax matters, but
18 nothing here involved, except --

19 THE COURT: Wait a minute. You say in your
20 complaint --

21 MR. COSTELLOE: Except, your Honor -- Let me
22 say the principal occasion is a kickback matter.
23 The kickbacks became illegal on December 10th of 1971.
24 Before that it was necessary to establish guilt of
25 kickbacks. After that it was not. It first became

1 public in May of 1974, although my former partner,
2 Spader, in November of 1972, when he confessed to
3 his slush fund from American Airlines, said his
4 slush fund with all the laundry was nothing in
5 comparison to the evil of kickbacks. That's the
6 first I heard of kickbacks.

7 In May of 1974 there was a newspaper account
8 that airline executives, very clearly including
9 T.W.A., were involved in kickbacks.

10 In December of 1974 there was introduced
11 legislation which reflected my own suggestion to
12 the C.A.B and the Department of Justice in conference
13 that taxes and ticketing be tied together.

14 On December 21, '74, there was a newspaper
15 account of confessions of kickbacks in the industry
16 with a statement that had run to hundreds of millions
17 of dollars.

18 On January 1st there was an account of Minne-
19 sota Mining & Manufacturing Company which made an SEC
20 statement acknowledging liability of \$11 million for
21 divergence of funds of some \$100,000 for political
22 purposes, which gave tax benefits of only \$200,000.

23 Since then there has been a similar action by
24 Ashland Oil to be sure its next directors' meeting
25 would be valuable.

1 Since then there have been indictments of
2 the Minnesota Mining & Manufacturing Company people.
3 The point is that where there is any fraud, and a
4 kickback is fraud per se, I believe under the cir-
5 cumstances the penalty attaches to the entire
6 deficiency. That brings in two matters, something
7 that I did work on. I worked on the pipeline matter
8 and gave up, said I couldn't get proof that the
9 matter existed. I said that in 1970. I quit the
10 T.W.A. work then on that account.

11 The firm tried until July to establish the
12 assets existed. Then it went into litigation,
13 Chadbourne sued the United States Government for
14 the T.W.A. in a matter involving about \$20 million
15 differences in taxes and in a way directly opening
16 up matters that I had settled for T.W.A. with almost
17 complete success in the order of income adjustments
18 of over \$100 million on an expressed quantum meruit
19 basis, for which I received no payment and as to which
20 T.W.A. has sought before Judge Connor to bar me from
21 all courts for all times in all matters specified and
22 unspecified and on which Judge Connor has refused
23 that.

24 Mr. Warner renewed that attack on December
25 30th, the day before the Minnesota Mining matter,

1 is still pending before Judge Conn r. I think there
2 is a flagrant felonious criminal obstruction of
3 justice by Chadbourne, by T.W.A., by American Brands,
4 by Anaconda, Gilbenco Foundation; I served them
5 well, sir. They have interest, that war broke out,
6 Russia is financing the other side. I served them
7 in Kuwait and Iraq. I have them completely exempt
8 from all U.S. tax, retroactively, saved them \$25
9 million. For that I got \$75,000 and a ruined
10 professional reputation from my former firm. It
11 had in it Mr. Spader, a confessed felon.

12 T.W.A. is notorious for political corruption.
13 I left partly on that account. The medication was,
14 when a senior Chadbourne partner --

15 THE COURT: Haven't you talked yourself out
16 of the case?

17 MR. COSTELLOE: No.

18 THE COURT: You're saying T.W.A. is guilty of
19 political corruption.

20 MR. COSTELLOE: It is.

21 THE COURT: You're suing T.W.A., your former
22 client. Did the corruption start in 1972?

23 MR. COSTELLOE: I don't think it did. I went
24 to the Nixon bail in 1969. I left the firm in '68
25 because this was coming. I knew nothing of the

1 corruption until it started to break. I first
2 learned of payment by Rodell to Mills in a ruling
3 matter in 1972. I stood off as well as I could.
4 I didn't bring this suit until the public interest
5 was threatened. I never sued T.W.A.

6 THE COURT: I'm inclined to think if there
7 is that much public interest, there ought to be some-
8 one with less shadow on his reputation to bring it.

9 MR. COSTELLOE: Someone should, your Honor.
10 I know that --

11 THE COURT: You shouldn't instigate it, I think.

12 MR. COSTELLOE: I don't want to become impli-
13 cated. They have done what they can. I want to be
14 free of it, I want to sue them for my fee. I want
15 to be clear of this. I would welcome other counsel.
16 I'd be glad to stand aside, stand out of it. But
17 it shouldn't be made a secret, your Honor.

18 THE COURT: To the extent that it involves
19 disclosure of things which are partly based on your
20 services --

21 MR. COSTELLOE: No disclosure of anything
22 that represents my services in this matter. I left
23 them early in 1970 and the difficulties started to
24 appear after that. I felt it might be coming, but
25 I knew nothing of it. I do know, your Honor, that

1 T.W.A. is very probably insolvent because of the
2 kickback matter. I do know the kickback matter is
3 actively under two prosecutions under two grand juries
4 in this district. I would like to get, if I could,
5 your Honor, and I'd be glad to be out of the case --
6 I wish I were. I'd be pleased to sue for my fee and
7 damages. That's all I want to do. I would like to
8 have this turned over to other counsel, the U.S.
9 Attorney, the Department of Justice, and the Treasury
10 should know about it.

11 THE COURT: I don't know, as a matter of
12 fact, turning it over to other counsel -- you're a
13 pro se plaintiff, a little odd situation. If you're
14 disqualified as counsel --

15 MR. COSTELLOE: I shouldn't be disqualified.
16 I'll appeal that if I have to.

17 THE COURT: You may be disqualified also as
18 a representative stockholder to bring a derivative
19 action.

20 MR. WARNER: That is precisely the holding
21 of the Second Circuit in the Meyer Hoffer case.

22 MR. COSTELLOE: A lawyer has to tell. I'd
23 be glad to submit the SEC brief in that case. It's
24 entirely different from what you're saying.

25 MR. WARNER: If I may get to the Meyerhofer.

1 case, I'll read it to you. It appears at 497 F.2d
2 1190. It's on page 6 of my memorandum where the
3 Court held, "The plaintiff should be prohibited
4 from acting as a party or as an attorney for any
5 party in any action arising out of the facts herein
6 alleged."

7 MR. COSTELLOE: That was just to clear him up
8 as a witness. You have been a witness improperly
9 in the Connor proceedings. You're being a witness
10 here. What you're saying is not true.

11 THE COURT: What's not true?

12 MR. COSTELLOE: The substance of what he is
13 saying is not true. There is no vicious vendetta.

14 THE COURT: The Meyerhofer case says that
15 you should not be an attorney or a party to an
16 action against a former client.

17 MR. COSTELLOE: In Meyer Hoffer, the lawyer
18 found there had been a finder's fee for the firm
19 of which he was associated. He was commended for
20 that. The SEC said he was under criminal sanctions,
21 required to do that. The litigants there got the
22 file sealed and even the SEC sealed the file. I can
23 show you an excerpt from the brief which will cast
24 an entirely different complexion on the matter.
25 Here, your Honor, I ceased connection with this

1 matter years before the two matters involved, the
2 kickbacks, I knew absolutely nothing about. I would
3 like, if I could, sir, to address you to public
4 interest matter of the Pan Am-T.W.A. transaction.
5 That should be made known to you apart from any fault
6 of my own, which I deny. Can I state it?

7 THE COURT: Yes.

8 MR. COSTELLOE: I became active in this last
9 Friday evening when John Chancellor said on TV that
10 T.W.A. had sold six 747 aircraft, would sell more,
11 making it about a \$200 million transaction.

12 According to the current press reports, that
13 sale was known to have been negotiated completely
14 for more than a week, but that disclosure was not
15 made until after the C-A.B. approved a route swap,
16 exchange. The route swap is one of the subjects
17 the grand jury is investigating.

18 Given the news that T.W.A. was selling two-
19 thirds of its 747 fleet, it was clear that its
20 intention was to abandon criminally, if it could, the
21 international business.

22 Mr. Tillingast first complained
23 that the permission to restrain trade was not for
24 five years, given only for two years or until the
25 Transatlantic case was worked out. Then a statement

1 to employees, since there would be such a change
2 in position. T.W.A. would have the C.A.B. locked
3 in. They wouldn't go back and pick up their old
4 routes. Generally, T.W.A. takes Europe, and Pan Am
5 takes the Pacific.

6 Then it was announced that the Iranians, who
7 were purchasing these aircraft on terms we don't know,
8 presumably on assumption of mortgages, had also
9 bought a controlling interest in the Pan Am hotel
10 business. You have to have both. They bought half
11 of T.W.A. and half of Pan Am, insuring that they
12 would get back in. Pan Am, in the meantime,
13 negotiating with Pan Am to train the pilots for
14 the F-14, which they bought from Grumman.

15 Grumman is signing over 3,000 people for two
16 years, technicians. It's just been announced Pan Am
17 just concluded a route restriction agreement with
18 England. The New York Times this morning, focusing
19 on Pan Am, said it would be too bad to let Pan Am
20 go under, but we must not let money affect our
21 foreign policy. The New York Times this morning --

22 THE COURT: What has this to do with the
23 stockholders suit?

24 MR. COSTELLOE: Unlawful restraint of trade
25 in the route swap unless the C.A.B approves. The

1 C.A.B. approval is good only as far as it is made
2 on adequate disclosure, proper authority, and it's
3 perfectly clear here the attempt to scramble the
4 egg, produce a cooked omelet no court could untangle,
5 any more than I.T.T. and Hartford. They're trying
6 to present the Court.--

7 THE COURT: Are you trying to be a private
8 Attorney General in here to enforce the antitrust
9 law?

10 MR. COSTELLOE: I have interest in air travel.
11 I have an interest as a stockholder, as a creditor.
12 I think this business is being criminally damaged
13 without authority of the government and this court
14 should satisfy itself that what is being done is
15 either reversible or that it's clearly approved.

16 On the point of reversibility, the Adminis-
17 tration is proposing that the C.A.B., for whom it
18 has a very low regard, be deprived of its authority
19 for this kind of exemption to the antitrust laws.
20 They're in favor of full competition.

21 The Administration bill will be introduced
22 in six weeks and C.A.B. will no longer have power
23 to do this, whether upon mistake, misrepresentation,
24 or the clearest of disclosures, but T.W.A. is trying
25 to do it to get a permanent injunction from the

1 antitrust laws which will destroy our overseas
2 airline business and turn over a tremendous pool of
3 technology to Iran, which will be sold to the Russians
4 or anyone else, a more effective pool than we have.
5 What they are trying to do is affect criminally our
6 antitrust policy, our overseas airline business, our
7 whole technological orientation and deprive me to fly
8 as comfortably as well as the citizen of a smaller
9 country, but we're supporting Lufthansa and we don't
10 have an airline --

11 THE COURT: I suppose you can tell this to the
12 Attorney General. I don't know why it brings you
13 into this court as plaintiff.

14 MR. COSTELLOE: It damages T.W.A. irreparably.
15 The court frequently is met with an antitrust pro-
16 ceeding and frequently it has the burden of, consent
17 decree is made, which has possibility for correction,
18 which has been done to meet the new situation,
19 which clearly will exist when the truth is known.

20 I think this is an appropriate case to impose--
21 there's nothing confidential about this, nothing
22 confidential about kickbacks, nothing at all.

23 MR. WARNER: Your Honor, if I may address
24 myself very briefly to that. When you have studied
25 Mr. Fletcher's affidavit, you will see why in the

1 interest of this pro se plaintiff he should wish
2 this matter ~~were held~~ ^{withheld}. The threats against Mr.
3 Fletcher, against Mr. --

4 MR. COSTELLOE: Show one. What went on.

5 THE COURT: Go ahead with your statement.

6 MR. WARNER: Mr. Fletcher receives telephone
7 calls from Mr. Costelloe --

8 MR. COSTELLOE: Can you give the text of
9 one?

10 THE COURT: Let him speak.

11 MR. WARNER: Ever since T.W.A. denied
12 Mr. Costelloe's bill for \$750,000, whenever
13 Mr. Fletcher has tried to reason with Mr. Costelloe,
14 in those telephone calls in which Mr. Costelloe
15 threatens all sorts of dire consequences --

16 MR. COSTELLOE: Completely untrue. That thing
17 should be testified here by Fletcher.

18 MR. WARNER: He is always going to go to the
19 United States Attorney's office. He's always going
20 elsewhere.

21 When Mr. Fletcher tries to reason with him
22 and say, "What can I do?" Mr. Costelloe replies,
23 "Pay, pay, pay."

24 MR. COSTELLOE: It's complete lies, despicable.
25 How often have I been to the U.S. Attorney's office?

1 How often? Did Fletcher testify to that?

2 MR. WARNER: I say you have threatened.

3 MR. COSTELLOE: I have been there once in my
4 life.

5 MR. WARNER: You have threatened Mr. Fletcher
6 with going.

7 MR. CASTELLOE: That's not what you said.
8 You said I'm always going to the U.S. Attorney's
9 office. Show me one threat.

10 MR. WARNER: With the last letter Mr. Tillin-
11 gast got from Mr. --

12 THE COURT: This letter apprised --"constrained
13 to apprise the Department of Justice there is a
14 T.W.A.-Sperry obstruction of justice."

15 MR. WARNER: Exhibit D, to Mr. Fletcher's
16 affidavit contains an example, merely an example,
17 of the kind of aggravated harassment inviolative
18 of the New York Penal Code, to which Mr. Tillingast
19 and Mr. Fletcher have been subjected. Mr. Costelloe
20 asked in particular where was there any threat to
21 T.W.A. that Mr. Costello was going to bring this
22 matter to the attention of Mr. Trager.

23 MR. COSTELLOE: I said what threats to
24 Fletcher?

25 MR. WARNER: The threat to Fletcher is con-

1 tained in the middle of this long affidavit here.

2 Unfortunately, I don't have it paginated.

3 THE COURT: I don't want to get into these
4 matters.

5 MR. WARNER: Here's the threat he asked me
6 to show you, to go to Mr. Trager.

7 MR. COSTELLOE: I suggest we read that letter
8 when we come back in an hour.

9 THE COURT: It would require the United States
10 Attorney Trager be apprised. "I ask your early
11 attention for consideraton for inclusion and revision
12 of the enclsoure to him." It's a statement that he
13 intends to talk to the U.S. Attorney about.

14 Did he send copies to all those people?

15 MR. WARNER: Yes, he did.

16 MR. COSTELLOE: I did not. Who are all the
17 people?

18 MR. WARNER: The people are five of my partners.
19 The officers of five of my clients, the chairman --

20 MR. COSTELLOE: This is a letter to Trager,
21 Harold. This is the Trager letter.

22 THE COURT: You did send it to all those
23 people?

24 MR. COSTELLOE: Yes, I did. These are the
25 people who are after me to keep me out of all courts

1 for all times. Mr. Warner's motions of June and
2 December. This was to Mr. Trager. I haven't yet
3 sent it to Mr. Trager, but I haven't had a response.
4 There has been no denial. It's a very serious matter.
5 Lives are being lost.

6 MR. WARNER: To conclude, your Honor, the rea-
7 son I ask for a confidential trial is for protection
8 of this plaintiff. I think when you have finished
9 reading that affidavit of Mr. Fletcher, which is an
10 understatement of the unprofessional conduct, that
11 this pro se plaintiff should be censured and dis-
12 qualified from maintaining this action.

13 MR. COSTELLOE: A lawyer has a duty to dis-
14 close fraud or misconduct. The lawyer has the
15 opportunity to defend himself. The lawyer is entitled
16 to collect a fee. The confidence is only that re-
17 quired by law to be protected. There is no protec-
18 tion for people who are killers for lousy equipment.
19 Your wings don't even exist. The pipeline assets
20 are fake. You're worse than Homestake; people are
21 flying on tired wings and dead engines, so you can
22 suck off money to the travel agents.

23 THE COURT: I think somebody else ought to
24 bring it, I think even with respect to matters
25 subsequent to the time you say.

1 MR. COSTELLOE: May I sue for my fee?

2 THE COURT: All that's before me is a motion
3 to dismiss a complaint and a motion for preliminary
4 injunction. I'll say nothing --

5 MR. WARNER: Your Honor --

6 THE COURT: Wait. I think even with respect
7 to matters that arose after you say you dissociated
8 yourself from T.W.A., matters in 1970, your claim
9 against T.W.A. for a fee, which is still unresolved,
10 I gather really makes you an improper party for a
11 derivative stockholders action.

12 MR. COSTELLOE: This is not a derivative
13 stockholders action.

14 THE COURT: What else is it?

15 MR. COSTELLOE: Suit to restrain -- there
16 won't be any T.W.A. witnesses. It owes me something.

17 THE COURT: I don't think an unliquidated
18 creditor has a right to interfere with a business.

19 MR. COSTELLOE: Any objection to my turning
20 this trial over to the U.S. Attorney?

21 THE COURT: I can't stop what you do to the
22 U.S. Attorney.

23 MR. COSTELLOE: Good. I've encompassed what
24 I wanted. I'll sue you for fee and damages.

25 THE COURT: Let me hear from you, Mr. Warner.

1 MR. WARNER: Your Honor, I recommend to you
2 very serious reading of Mr. Fletcher's affidavit.
3 I and my firm have a duty to our clients. When you
4 see what this man has done --

5 MR. COSTELLOE: What exhibit is it?

6 MR. WARNER: It's Exhibit D. Just as a little
7 example, Mr. Costelloe.

8 MR. COSTELLOE: Thank you. Where is this?
9 The affidavit.

10 MR. WARNER: This is his affidavit.

11 MR. COSTELLOE: This is a memorandum.

12 THE COURT: No, it's the affidavit.

13 MR. COSTELLOE: I see.

14 MR. WARNER: My clients are demanding --

15 MR. COSTELLOE: I haven't been incoherent.

16 THE COURT: Let me hear Mr. Warner, please.

17 MR. WARNER: My clients have been demanding
18 and inquiring, indeed, the Gulbenkian Foundation,
19 represented by Freshfield of London can't understand
20 how clients can continue to be harassed in the
21 manner Mr. Costelloe has --

22 MR. COSTELLOE: You misdated the letter.

23 THE COURT: Wait a minute.

24 MR. WARNER: I have told them with pending
25 litigation we cannot go to the bar association, but
when this man comes into court and demonstrates what

1 he has done, his conduct is so unprofessional that
2 he should be censured and he should be disqualified
3 from maintaining this kind of action.

4 THE COURT: Two different things here. You
5 have a motion to dismiss. You have an opposition for
6 motion for P.I., motion to dismiss a complaint. You
7 have a complaint, complaint about lawyer's conduct.
8 Disciplinary matters go through the Chief Judge.
9 If you want to ask me on the basis of this whether
10 I think I should refer it to the Chief Judge, I will
11 consider that.

12 MR. WARNER: I most seriously urge it be done.
13 I recognize you cannot have digested what is but a
14 small portion. Were I to bring the file in, it
15 would be two feet high.

16 MR. COSTELLOE: Would you bring it, Harold?
17 Might I examine it?

18 MR. WARNER: With respect to one thing, I was
19 hoping last June when we were in front of Judge
20 Connor and you could see from the end of Judge
21 Connor's opinion --

22 MR. COSTELLOE: Still pending before Judge
23 Connor.

24 MR. WARNER: The case has been dismissed.

25 MR. COSTELLOE: It's pending since December
10th. You filed papers on December 30th. There's no

1 truth to the matter.

2 MR. WARNER: Judge Connor will answer to that.
3 It was dismissed --

4 MR. COSTELLOE: If you want to try the Connor
5 case, I'll bring it.

6 THE COURT: I don't care about the Connor
7 case.

8 MR. WARNER: At that time Mr. Costelloe finally
9 sued me, personally, five of my partners, and my
10 law firm in Suffolk County, Long Island.

11 MR. COSTELLOE: There has been no complaint
12 filed. The whole thing came because my senior
13 partner --

14 THE COURT: I can't listen to two people at
15 once.

16 MR. COSTELLOE: I'm sorry.

17 THE COURT: Go ahead.

18 MR. WARNER: At that time he served a summons
19 with notice, but with no complaint. The summons said,
20 "The object of this action is to get money."

21 MR. COSTELLOE: It didn't.

22 MR. WARNER: I was sued personally for
23 \$750,000, as was each of my partners. We duly
24 retained counsel at Northport, Long Island.

25 MR. COSTELLOE: Your brother-in-law.

1 THE COURT: Please.

2 MR. WARNER: Northport, Long Island, New York,
3 who demanded a copy of the complaint. Despite
4 reiterated demand, Mr. Costelloe never filed any
5 copy of the complaint. Finally, in December, Mr.
6 Henry G. Ingram, who represented us in that action
7 in Riverhead, moved to have the action dismissed for
8 lack of prosecution and for failure to serve a com-
9 plaint. Still, no complaint was filed and the Supreme
10 Court --

11 THE COURT: You're far off from this action.

12 MR. WARNER: Your Honor, I merely want to tell
13 you what is in the background of a very complicated
14 letter-writing campaign. He writes the chairman of
15 the board of T.W.A. with copies to the chairman of
16 the Civil Aeronautics Board asking to borrow money
17 from T.W.A. as an advance against what he claims my
18 firm owes him.

19 THE COURT: You're off the motion now.

20 MR. WARNER: I certainly am, except --

21 THE COURT: That's disciplinary action.

22 MR. WARNER: Yes, except it tends to show
23 why this man reads a newspaper or if you look at the
24 sealed file, before Judge Connor, you will see that
25 every time a newspaper article comes out, whether it

1 be a sale of Iranian Airliners or a crash of a
2 Lufthansa airplane, immediately it becomes the fault
3 of one of our clients. When Lufthansa crashes,
4 Sperry Rand --

5 THE COURT: You're getting a little worked up,
6 too.

7 MR. WARNER: I'm merely quoting the kind of
8 letters in Judge Connor's file. This is what can be
9 expected in this court if this action is permitted
10 to be maintained by this man.

11 MR. COSTELLOE: It's not at all what he says.
12 I didn't file in Riverhead because the case was the
13 same, the file was sealed, therefore I couldn't file.
14 It's hard to be dealt with under a sealed file.

15 THE COURT: What I'm going to do is dismiss
16 the present action which will result in a denial of
17 the motion for preliminary injunction.

18 I'll take under advisement Mr. Warner's
19 request there be some disciplinary action as a result
20 and I'll let you send me a letter of any sort you
21 think is necessary beyond what the papers are already.

22 MR. COSTELLOE: How much time do I have for
23 that?

24 THE COURT: With relation to whether this is
25 anything that the Chief Judge of the District should

1 refer to any bar association.

2 MR. COSTELLOE: I don't think that's fair,
3 your Honor. I think there's so much more to the
4 matter than that. I think that the United States'
5 interests are being seriously harmed. I think
6 I should appeal from that and not have it confused
7 with any point of bar association at this part
8 of the action. I'm convinced, your Honor, I will
9 need more time but I say my own interests are
10 secondary. I think the public interest in a kick-
11 back matter and the public interest, continuance
12 of our airlines, has far greater precedence, and
13 I wouldn't have acted without that. I didn't bring
14 this action until that happened.

15 THE COURT: Let me just put this memorandum
16 on the record.

17 Plaintiff has filed a complaint in this
18 court alleging various types of misconduct on behalf
19 of -- on the part of Trans World Airlines (T.W.A.),
20 including improprieties of the sale of 747 airliners
21 to Iran, antitrust violations, misrepresentation of
22 its financial condition, including failure to show
23 tax liabilities which may be inconsistent with its
24 financial solvency and violative of its covenants
25 with debt service, airline kickbacks to travel agents.

1 and improper payment to the campaign fund of Congress-
2 man Mills, among other things.

3 He ~~claims~~ federal court jurisdiction under the
4 Securities Act and as beneficial owner of T.W.A.
5 common stock held in the name of his son, and as one
6 who is being "prevented from proper use of airline
7 travel by monopolistic combinations in restraint of
8 trade outside any permissible exception."

9 He ~~has~~ moved for a preliminary injunction requir-
10 ing T.W.A. to comply with the requirements of Rule
11 10-B-5 of the Securities and Exchange Commission in
12 respect of its tax liabilities, and an injunction
13 against consummating the sale or disposition of air-
14 craft to the Governemnt of the State or the Nation of
15 Iran.

16 Defendants have moved to dismiss the action
17 for failure to state a claim upon which relief can
18 be granted, and in that connection have called atten-
19 tion to circumstances, regardless of the validity of
20 the allegations in the complaint, that may disqualify
21 plaintiff as a proper attorney or party to the action.

22 It appears without contradiction that plaintiff
23 was a partner of the law firm of Chadbourne, Park,
24 Whiteside & Wolf from March 1958 to June 1, 1968;
25 that he was a tax consultant for that firm thereafter

1 until December 31, 1971 --

2 MR. COSTELLOE: I did nothing after the early
3 part of '70 --

4 THE COURT: (Continuing) That the firm has
5 been counsel for many years for Trans World Airlines,
6 Inc., and that plaintiff worked on tax problems for
7 T.W.A. at least until sometime in the year 1970.

8 The Court has directed the files be sealed
9 and has held the hearing on the motion in chambers
10 because of concern both for publicity of the nature
11 of current charges by the defendant against the
12 plaintiff and because of concern with respect to
13 the publicity about any of the matters until they are
14 brought by a proper party.

15 The Court of Appeals has held that a former --

16 MR. COSTELLOE: Don't you know I should be
17 allowed to give a memorandum.

18 THE COURT: You can appeal it. I am deciding
19 it now.

20 The Court of Appeals has held that an attorney
21 is disqualified to bring an action against his former
22 client or to represent another party in such an action
23 where it relates to matters in which the attorney
24 previously represented the client and that "the
25 dynamics of litigation are far too subtle, the attor-

1 ney's role in that process is far too critical, and
2 the public's interest in the outcome is far too
3 great to leave room for even the slightest doubt
4 concerning the ethical propriety of a lawyer's
5 reputation in a given case."

6 MR. COSTELLOE: I'm not representing, pro se.

7 THE COURT: Emle Industries, Inc. v. Pattenex
8 Inc., 478 F.2d 562 at 571 (2d Cir. 1973).

9 In Meyerhofer v. Empire Fire & Marine Insurance
10 Co., 490 F.2d 1190, 1196 (2d Cir. 1974), the Court
11 affirmed an order which prevented a former attorney
12 for a client from acting either as a party or as an
13 attorney for a party in any action arising out of
14 the facts therein described.

15 Some of the matters involved in the complaint
16 and the application for an injunction have arisen
17 subsequent to Mr. Costelloe's termination of any
18 activity with respect to T.W.A. matters, but the
19 complaint, as a whole, involves the possibility of
20 delving so far into T.W.A. corporate matters and
21 intercorporate and governmental relationships that
22 it would be unseemly to permit him to act either as
23 a party or as an attorney in the action. Although
24 the action is brought pro se, it may even be regarded
25 as action in the interest of his son Kevin Costelloe,

1 who owns the ten shares of T.W.A. stock which are
2 involved with him acting as attorney.

3 Under the circumstances, the Court finds that
4 Mr. Costelloe is: disqualified to bring this action,
5 therefore does not reach the merits of the complaint
6 or of the motion for a preliminary injunction.

7 This memorandum, together with the rest of
8 the file will remain sealed.

9 Mr. Costelloe is not forbidden from bringing
10 to the attention of the United States Attorney for
11 the Eastern District or of any other governmental
12 agencies which he sees fit any of the matters
13 described, subject to the provisions of the code of
14 professional responsibility with respect to publicity
15 that might be given to any such step.

16 Mr. Costelloe is not forbidden from suing
17 T.W.A. or the firm of Chadbourne, Park, Whiteside &
18 Wolff for any sum of money that he claims is due to
19 him. Any problems that arise in such an action should
20 be considered by the court in which the action may
21 be brought.

22 Harold L. Warner, Jr., who appeared for the
23 defendant in the action, has suggested that there are
24 aspects of Mr. Costelloe's conduct with respect to
25 T.W.A. that are unprofessional and would justify
disciplinary action. The Court makes no determination

1 on that but will give further study to the matter
2 and will also consider any papers which Mr. Costelloe
3 may submit on that subject. Rule 5 of the General
4 Rules of this court refers all disciplinary matters
5 to the Chief Judge, who may then refer them to the
6 Bar Association. This Court will consider anything
7 from Mr. Costelloe before determining whether even
8 to bring this matter to the attention of Chief Judge
9 Mishler.

10 It is therefore ordered, that the complaint
11 be dismissed on the basis of the disqualification of
12 the plaintiff and that the motion for preliminary
13 injunction be denied as moot, the complaint having
14 been dismissed.

15 I would like the court reporter to type
16 that out for me immediately and since the decision is in
17 favor of the defendant, I think the defendant should
18 pay for the transcript and Mr. Costelloe can get a
19 copy at copy charges.

20 MR. COSTELLOE: I request an evidentiary hearing.
21 I request an opportunity to submit memoranda. I think
22 that findings are in order. I admire your sense of
23 justice. I wish you would take a little time on the
24 matter. I think it's very important. I do ask for
25 an evidentiary hearing.

1 I haven't had an opportunity to submit an
2 affidavit to answer papers that I first saw this
3 morning, haven't read.

4 THE COURT: Do you dispute the fact that you
5 were working on T.W.A. tax matters until sometime in
6 1970?

7 MR. COSTELLOE: In any relevant sense, yes,
8 I deny it completely.

9 THE COURT: Any relevant sense?

10 MR. COSTELLOE: Yes, sir. I can only say, sir,
11 I'm a careful lawyer. You're not doing justice
12 to me or yourself.

13 THE COURT: You worked on T.W.A. tax matters
14 involving hundreds of millions of dollars.

15 MR. COSTELLOE: I'm gravely concerned because
16 felonies are committed. A lawyer is entitled to
17 defend his name. There has been bribery behind my
18 back, quite candidly, very serious criminal misdeeds.
19 I'm pleased to be free to apprise the United States
20 Government, because I have no interest in any vendetta.
21 I haven't sued these people. I have concern for human
22 lives. I do think secrecy is overdone here.

23 THE COURT: I'm making no finding with respect
24 to any improper threats that you may have made.
25 That's a matter --

1 MR. COSTELLOE: You haven't heard a word of
2 sworn testimony, haven't given me a chance to reply
3 to papers I first saw today. You're being unfair to
4 me, myself, and I propose to appeal.

5 THE COURT: There is no relevant issue that
6 has to be decided by evidentiary hearing. You have
7 a right to appeal.

8 MR. COSTELLOE: Can I take exception to
9 Mr. Warner's testimony, comment on his acting as a
10 witness without -- abusing the seal of the file he
11 generated himself, the enormous abuse he has engaged
12 in that, the oil money behind this thing, you're
13 being seriously abused, your Honor.

14 THE COURT: I did not regard Mr. Warner as a
15 witness. I regarded, I thought he was describing
16 what was in Mr. Fletcher's affidavit.

17 MR. COSTELLOE: He has not. Can I have a
18 transcript of what he said here?

19 THE COURT: The sealed file in Judge Connor's
20 chambers, I have taken it ^{was} ~~with~~ seal^d to prevent it
21 becoming public, but since he was attorney in the
22 matter, he has a right to describe to another court
23 in chambers hearing what was said.

24 MR. COSTELLOE: It's still pending, no final
25 decision. He's misrepresented hundreds of thousands

1 of stockholders, the transcript, to be complete --

2 THE COURT: There has been a full transcript
3 made. Anyone can order a copy of the transcript.
4 I asked Mr. Silverman to get out promptly the order.

5 MR. COSTELLOE: Might I have a transcript?
6 Will you share the cost?

7 MR. WARNER: Absolutely.

8 MR. COSTELLOE: How much time to I have to
9 respond after I get the transcript?

10 THE COURT: You can take as long as you want
11 to respond with respect to the disciplinary matter,
12 thirty days if you want.

13 MR. COSTELLOE: Should I appeal forthwith?

14 THE COURT: I think it's within thirty days.

15 MR. COSTELLOE: No time to consider the
16 transcript to get back to you?

17 THE COURT: If there are changes in the
18 transcript, give notice.

19 MR. COSTELLOE: You will not entertain any
20 argument or memorandum or authorities?

21 THE COURT: You may also move for reargument.

22 MR. COSTELLOE: Thank you, sir.

23 THE COURT: I think I have not been over hasty.
24 I have decided on what I consider a narrow ground on
25 undisputed facts.

MR. COSTELLOE: Thank you, your Honor.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
JOHN F. COSTELLOE, :
Plaintiff-Appellant, : CERTIFICATE OF SERVICE
-against- : Index No. 75-7162
TRANS WORLD AIRLINES, INC., :
Defendant-Appellee. :
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Harold L. Warner, Jr., being duly sworn, deposes
and says:

1. I am attorney for defendant-appellee in this case.
2. Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that I have served on John F. Costelloe, plaintiff-appellant, pro se, two copies of Brief for Defendant-Appellee and one copy of Appellee's Supplemental Appendix in conformance with Rule 31(b) of the Federal Rules of Appellate Procedure, by mailing the same on this 10th day of June, 1975 addressed as follows:

John F. Costelloe, Esq.
216 Little Neck Road
Centerport, New York 11721

Harold L. Warner, Jr.
Attorney for Defendant-Appellee
30 Rockefeller Plaza
New York, New York 10020

Subscribed and sworn
to before me this 10th
day of June, 1975.

Notary Public